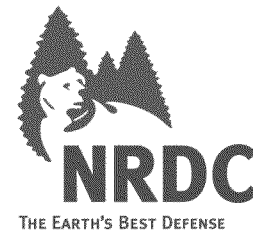
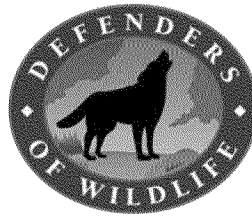


American Rivers
Rivers Connect Us®



May 13, 2014

John Laird
Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

David Murillo
Regional Director
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Mark Cowin
Director
California Department of Water Resources
P.O. Box 942836, Room 1115-1
Sacramento, CA 94236-0001

Ren Lohofener
Regional Director
U.S. Fish and Wildlife Service
2800 Cottage Way
Sacramento, CA 95825

Chuck Bonham
Director
California Department of Fish and Wildlife
1416 9th Street, 12th Floor
Sacramento, CA 95814

Will Stelle
Regional Director
National Marine Fisheries Service
7600 Sand Point Way, NE, Bldg 1
Seattle, WA 98115-0070

Re: Request for 60-day Extension of DEIS/EIR Comment Deadline

Dear Messrs. Laird, Cowin, Bonham, Murillo, Lohofener, and Stelle,

We are writing on behalf of the Natural Resources Defense Council, Defenders of Wildlife, American Rivers, The Nature Conservancy, and The Bay Institute and our hundreds of thousands of members and activists in California to request an extension of at least 60 days for submitting comments on the tens of thousands of pages of materials comprising the draft proposed Bay Delta Conservation Plan ("BDCP") and draft EIS/EIR on BDCP. This request would extend the deadline for public comment on those documents from June 13, 2014, to at least August 12, 2014.

This extension is requested and merited for three primary reasons. First, as you know, California is in the midst of an extraordinary drought, causing water management challenges unlike any we have experienced in several decades. These extraordinary conditions have demanded near

constant vigilance and participation in water management decisions this year by many stakeholders in the water community, including our organizations. The State has acknowledged that the work involved in responding to drought has necessarily resulted in the delay of many workplans and schedules. For instance, as the State announced on its BDCP website on May 5, 2014, when explaining that an anticipated draft Implementation Agreement for BDCP was still not available:

the past weeks have required significant time commitments from key water management and regulatory principals. Understand that this is the worst drought California has faced in nearly 40 years, and operations and regulatory decisions need to be made in real time to address water needs for the rest of 2014.

<http://baydeltaconservationplan.com/News/KeyAnnouncements.aspx>. Similarly, the California Department of Justice, on behalf of the Department of Water Resources, recently sought an extension of time for a filing deadline in the Ninth Circuit Court of Appeals. The filing by the State Water Contractors, joined by DWR, based that request for delay on the grounds that, among other things:

Water year 2014 has produced one of the driest years on record in the State of California. Indeed, on January 17, 2014, Governor Edmund G. Brown proclaimed a State of Emergency, directing agency officials to take all necessary actions to prepare for the expected drought conditions. ...The drought conditions in 2014 have exacerbated the already-limited resources of State Contractor Appellees. State Contractor Appellees are consequently involved in managing the water needs of their constituents and stakeholders, and this drought period has required legal and technical resources that might otherwise have been applied to evaluating the panel's decision and determining whether to seek rehearing en banc.

San Luis Delta-Mendota Water Authority v. Salazar, lead case no. 11-15871, Appellees' Unopposed Motion for Extension of Time to Petition for Rehearing En Banc and For Leave to File Oversized Petition (9th Cir., April 15, 2014) (citations omitted).

Agencies affected by the drought include many BDCP responsible agencies that are bound by the current comment deadline, such as the State Water Resources Control Board. The SWRCB recently announced that because of the time and staffing required to respond to drought, they have further delayed the release of the draft Substitute Environmental Document for Phase I of the update of the Bay Delta Water Quality Control Plan.

Of course, non-governmental stakeholders and the public also are deeply affected by the drought and also have committed significant time and effort to tracking and responding to the drought, and attempting to reduce or mitigate the drought's harmful impacts on people and California's environment. The unanticipated demands of the drought have limited the amount of time that we and many other stakeholders and members of the public engaged in water issues have been able to devote to the important task of reviewing and analyzing the draft BDCP and draft EIS/EIR. For instance, the state and federal agencies have filed numerous temporary urgency change petitions to the SWRCB, which have necessitated our review and, where appropriate, filing of

protests and requests for reconsideration. We have also been involved in numerous meetings with the state and federal agencies regarding drought response, allocations, water project operations, and related actions. All stakeholders have had to dedicate significant, unplanned resources to address the drought, and that has impacted our ability to review and comment on BDCP.

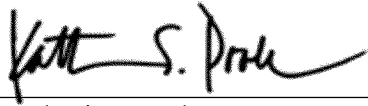
Second, key information has not yet been made available to the public that is critical to developing informed comments on the potential impacts of the proposed BDCP. That information includes the draft Implementation Agreement, which is likely to substantially affect the environmental impacts of the proposed project and the adequacy of the analysis in the draft EIS/EIR. For example, a recurring topic in discussions of the Implementation Agreement has been the level of water supply assurances, if any, that will be provided to contractors, and the level of assurances, if any, that biological goals and objectives of the draft BDCP will be met. The attached document prepared by several of BDCP's proponents in January, 2014, seeks "a level of water supply reliability of approximately 75% for both the SWP and CVP water service contractors and the SWP post-construction." *See* attached Critical Issues document, edited by J. Maher (Jan. 27, 2014). Such a commitment, if made in the draft Implementation Agreement, would represent a marked departure from previous commitments by federal and state agencies to not provide water supply assurances and would significantly worsen the impacts associated with the operation of a proposed BDCP as analyzed in the draft EIS/EIR. The public should be made aware of the full range of commitments proposed in the draft Implementation Agreement prior to requiring public comment on the draft EIS/EIR.

The Implementation Agreement will directly affect commitments, responsibilities, implementation roles and financial responsibilities contained in the BDCP. Indeed, the Natural Community Conservation Planning Act requires public review and comment on the draft Plan (including all associated documents like the draft Implementation Agreement), and encourages that the draft Plan and CEQA document be circulated for review and comment at the same time. Cal. Pub. Res. Code § 2815. Because the draft Implementation Agreement is likely to substantially affect the environmental effects of the BDCP, the agencies should extend the comment period on the draft EIS/EIR to be coterminous with the comment period on the draft Implementation Agreement and draft plan.

Finally, as numerous independent reviewers and agency representatives have acknowledged on many occasions, the proposed BDCP and draft EIS/EIR comprise "the most complex HCP/NCCP permit application ever attempted." *See* Saracino and Mount, "Panel Review of the Draft Bay Delta Conservation Plan" (September 2013) at 6, available at <https://watershed.ucdavis.edu/files/biblio/FINAL-BDCP-REVIEW-for-TNC-and-AR-Sept-2013.pdf>. The proposed project is immensely complicated, the analysis exceedingly lengthy, and the topic vitally important to every Californian. By this request, we seek the time needed to review it carefully and provide thoughtful input.

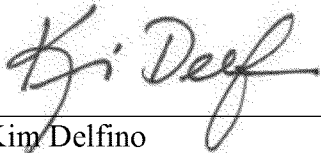
Thank you for your prompt consideration and response.

Sincerely,



Katherine Poole

Natural Resources Defense Council



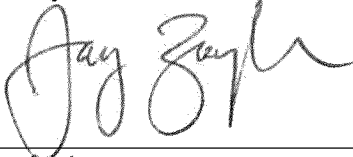
Kim Delfino

Defenders of Wildlife



Jonathan Rosenfield

The Bay Institute



Jay Ziegler

The Nature Conservancy



John Cain

American Rivers

Cc: Tom Howard, Executive Director, SWRCB
Jessica Pearson, Delta Stewardship Council
Stephanie Skophammer, U.S. Environmental Protection Agency
Andrew Constantaras, U.S. Army Corps of Engineers

ATTACHMENT 1

Critical Issues

January 27, 2014

Threshold Issues Requiring Attention

- **The current level of federal effort is jeopardizing ~~does not support~~ the BDCP.** The engagement of the federal agencies must dramatically improve to ensure that water supplies and species populations improve. The available solutions are limited to direct communication between the governor, ~~Senator~~ Feinstein and the White House. The purpose of that communication is to secure a commitment from the federal administration that it will direct its agencies to participate in the BDCP as a full partner with the state and as a project proponent.
- **The BDCP proposed project provides insufficient water supplies.** – As currently proposed, ~~constructed~~ the BDCP will not result in sufficient water supply benefits to support a decision to continue funding the development of this program. In general terms, the BDCP should result in a level of water supply reliability of approximately 75% for both ~~the SWP and CVP water service contractors and the SWP post-construction~~. The available solutions are to increase the yield of the BDCP project through changes in default assumptions, to implementing publicly funded programs that help meet environmental water demands, and, given the substantial commitment of water and other resources being made in BDCP, to establishing a minimum water supply below which water will not be taken from SWP and CVP water service contractors for other purposes, including environmental purposes.
- **The cost of the BDCP is high, and there is significant concern that it will increase.** Recent experience shows that the cost of large public works projects tends to increase during construction. The cost of the BDCP is so high there is no room for any increase in cost. To reduce the likelihood of cost increases during construction, all costs need to be controlled by the entities that choose to fund construction of the BDCP. The available solutions are to allow DWR to retain design approval, while delegating all construction-related decisions to the local public agencies that volunteer to pay for the construction of the tunnels.
- **The BDCP's regulatory assurances to permittees are weak.** Strong regulatory assurances increase the willingness of local public agencies to fund the BDCP and construction of the new conveyance facilities ~~tunnels~~. The assurances currently included in the BDCP are unclear and uncertain. The available solutions include clear delineation in BDCP of permittee commitments of water, financial and other resources so that permittees can rely upon establishing a minimum water supply from the project, and clear commitment ~~certainty~~ that a lack of funding by the state and federal agencies doesn't invalidate the permits for operation of the new conveyance facilities ~~BDCP's tunnels~~.

Additional detail on each of these issues and possible solutions were provided to the governor's staff in prior meetings.